

IN THE UNITED STATES BANKRUPTCY JUDGE

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 7 Case
	)	Number <u>86-11273</u>
TIDWELL PRINTING, INC.	)	
	)	FILED
Debtor	)	at 5 O'clock & 00 min. P.M.
		Date: 7-24-89

ORDER

First Union National Bank of Georgia, the holder of a secured claim in this Chapter 7 proceeding, seeks the allowance and recovery from the estate of reasonable attorneys fees pursuant to 11 U.S.C. §506(b). By order dated May 4, 1989, reasonable attorneys fees were allowed in the sum of Two Thousand Seven Hundred Fifty-Four and 70/100 (\$2,754.70) Dollars plus the recovery of costs in the amount of Two Hundred Seventeen and 70/100 (\$217.70) Dollars incurred by First Union during the pendency of this proceeding. The balance of the requested attorneys fees covers the period 1981 through 1982 and is the subject of this order.

Relative to the claim for attorneys fees during the period in question, the facts are not in dispute. Tidwell Printing, Inc. filed for protection under Chapter 11 of Title 11 United States Code in 1981. A plan of reorganization was confirmed on February 25, 1983. First Union, then Georgia Railroad Bank and Trust Company, was a principal secured creditor

in the previous Chapter 11 as in the present Chapter 7 proceeding. The plan, as confirmed, called

for payment of secured debts in full up to the value of the collateral. Acceptance of the plan cured all defaults as of the date of confirmation. The confirmed plan made no provision for the payment of attorneys fees, and no request was made during the pendency of the previous Chapter 11 for the payment of attorneys fees by First Union. The attorneys fees now requested were incurred pre-confirmation during the pendency of the previous Chapter 11.

First Union contends that its acceptance of the Chapter 11 plan in the previous proceeding would indicate a waiver of attorneys fees, but that waiver would fail for lack of consideration due to the fact that the Chapter 11 plan ultimately failed resulting in the current Chapter 7 liquidation. The contention of First Union is without merit. The Bankruptcy Code sets forth the effect of a Chapter 11 plan confirmation. With minor exceptions, the provisions of a confirmed plan bind the debtor and any creditor whether the claim or interest of such creditor is impaired under the plan and whether such creditor has accepted the plan. 11 U.S.C. §1141(a). The confirmed plan discharged the debtor from all claims arising prior to the date of confirmation except to the extent that the plan provides for payment of a claim. Section 1141(a) has the effect that the plan is binding upon all parties once it is confirmed, and all issues which could have been raised pertaining to such plan are

res judicata. The final order of confirmation terminates all rights of holders of claims and interest except as otherwise provided in the plan or the order confirming the plan subject to revocation of the order of confirmation pursuant to

§1144. Collier on Bankruptcy ¶1141.01 (L. King 15th Ed. 1989).

In the present matter under consideration, the previous Chapter 11 case was confirmed providing for the payment of~secured debt in full up to the value of the collateral. No attorney fees were applied for or allowed under §506(b). No order has been entered revoking the order of confirmation pursuant to §1144. The fact that some three years after emerging from Chapter 11 with a confirmed plan this debtor was the subject of a Chapter 7 liquidation does not alter the res judicata effect of the order of confirmation in the previous case. No attorneys fees were allowed in that matter, and the interest of First Union in the estate of the debtor was determined by the order of confirmation. The confirmation order has res judicata effect and cannot be altered absent a revocation of confirmation.

IT IS THEREFORE ORDERED that the application of First Union pursuant to 11 U.S.C. §506(b) for attorneys fees incurred during the pendency of a previous confirmed Chapter 11 case for the periods 1981 through 1982 is denied.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 24th day of July, 1989.